JUDGMENT OF THE COURT (Sixth Chamber)
16 December 1992 *

In Case C-17/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Rechtbank van Eerste Aanleg (Court of First Instance), Turnhout, Belgium, for a preliminary ruling in the proceedings pending before that court between

Georges Lornoy en Zonen NV and Others

and

Belgian State

on the interpretation of Articles 12, 13, 30, 92 and 95 of the EEC Treaty,

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, J. L. Murray, G. F. Mancini, F. A. Schockweiler and M. Diez de Velasco, Judges,

Advocate General: G. Tesauro,
Registrar: D. Triantafyllou, Administrator,

after considering the written observations submitted on behalf of:

— the undertakings Georges Lornoy en Zonen, Jos Theys, Van Lommel et Staf Lornoy en Zonen, by L. Schuermans, of the Turnhout Bar, and J. de Lat, of the Herentals Bar,

— the Commission of the European Communities, by R. Fischer, Legal Adviser, acting as Agent,

* Language of the case: Dutch.

having regard to the Report for the Hearing,

after hearing the oral observations of Georges Lornoy en Zonen NV, Jos Theys NV, Van Lommel PVBA and Staf Lornoy en Zonen NV, represented by J. Keustermans and L. Schuermans, Avocats, and the Belgian State, represented by A. Vastersavendts, Avocat, at the hearing on 4 June 1992,

after hearing the Opinion of the Advocate General at the sitting on 25 June 1992,

gives the following

Judgment

By order of 14 January 1991, received at the Court on 18 January 1991, the Rechtbank van Eerste Aanleg, Turnhout, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Articles 12, 13, 30, 92 and 95 of the EEC Treaty.

Those questions were raised in proceedings between certain undertakings trading in calves and the Belgian State concerning the legality of a compulsory contribution levied in Belgium on the slaughter or export of beef cattle, calves and pigs, for the benefit of a 'Fonds de la santé et de la production des animaux' (Fund for Animal Health and Livestock Production, hereinafter 'the Fund').

The Belgian Law of 24 March 1987 on animal health (*Moniteur Belge* of 17 April 1987) is intended, according to Article 2 thereof, 'to combat animal disease in order to promote public health and the economic welfare of livestock farmers'.

4 Article 32(2) of the Law in question provides as follows:

'A "Fund for Animal Health and Livestock Production", hereinafter referred to as "the Fund", shall be set up in the Ministry of Agriculture. The purpose of the Fund shall be to contribute towards the financing of compensation, allowances and other benefits for combating animal disease and improving the hygiene, health and quality of animals and animal products.

The Fund shall be financed by:

1. Compulsory contributions from natural and legal persons who raise, process, transport, handle, sell or trade in animals;

...'.

5 The same article provides that the amount of the compulsory contributions, the procedures for their collection and the penalties for non-payment are to be laid down by royal decree.

6 The ninth subparagraph of that article provides that:

'If the compulsory contribution is collected from persons who process, transport, handle, sell or trade in animals, it shall, on every transaction, be passed back up to the stage of the producer ...'

7 Pursuant to that Law, the Royal Decree of 11 December 1987 (*Moniteur Belge* of 23 December 1987), which entered into force on 1 January 1988, fixes the amount of the compulsory contribution per head of beef cattle, calf and pig slaughtered or exported to be paid into the Fund by the slaughterhouses or exporters.

8 Under Article 4(1) of that decree, 'the compulsory contributions imposed on slaughterhouses and exporters are to be recovered by them from the supplier of the animals who, if appropriate, shall recover them from the seller up to the stage of the producer'. Article 4(2) provides that the contribution is to be shown separately on the invoice of the slaughterhouse or exporter. The decree further provides that, in the event of non-payment of the contributions after two reminders have been issued, the slaughterhouse or exporter concerned is to pay double the amount due.

9 It is apparent from the documents before the Court that the plaintiffs in the main proceedings are Belgian undertakings which import calves from other Member States for slaughter in Belgium. After being required to pay the contributions in question, they brought an action against the Belgian State before the Rechtbank van Eerste Aanleg, Turnhout, for recovery of the sums paid. In support of that claim, they asserted that those contributions were contrary to Articles 12, 13 and 95 of the EEC Treaty, because they were also levied on calves imported into Belgium, whereas the Fund's resources were used solely for the benefit of Belgian producers.

10 In those circumstances, the Rechtbank van Eerste Aanleg, Turnhout, stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the EEC Treaty, and in particular Articles 12, 13, 30, 92 and 95 thereof, and the applicable Community directives, be interpreted as meaning that a Member State is not prohibited from introducing a compulsory contribution for the support of a "Fund for Animal Health and Livestock Production" —

in order to finance compensation, allowances and other benefits with a view to combating animal disease and improving the hygiene, health and quality of animals and animal products — first of all by imposing on slaughterhouses in that Member State for every slaughtered calf a compulsory contribution, which under the legislation is to be passed back in every sales transaction to the stage of the producer — which may and does mean that the contribution is charged to importers of calves from another Member State — and secondly by imposing on every exporter of calves the same contribution, which may also be passed back in every sales transaction to the stage of the producer?

(2) If the first question is answered in the affirmative, should such a contribution — given the purpose for which it is imposed, as described above — be regarded as a charge having equivalent effect, a charge and/or financial assistance for activities which exclusively benefit the domestic product concerned, and is it consequently prohibited?

(3) If the second question is answered in the affirmative, may an individual rely on the unlawful nature of this practice directly before a national court?'

11 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the national legislation at issue and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

12 In its questions, the national court seeks essentially to ascertain whether Articles 12 and 13, 30 et seq., 92 and 95 of the Treaty preclude the introduction of a compulsory contribution which constitutes a parafiscal charge levied on domestic and imported products alike, in accordance with the same collection procedures, and paid into a fund which operates solely for the benefit of domestic production. It also asks whether those provisions have direct effect.

13 In order to answer those questions, Articles 12 and 13, 30 et seq. and 95 of the Treaty should be considered first, followed by Article 92.

Articles 12 and 13, 30 et seq. and 95 of the EEC Treaty

14 The Court has consistently held (see, in particular, the judgments in Case 74/76 *Iannelli and Volpi* [1977] ECR 557 and in Cases C-78/90 to 83/90 *Compagnie Commerciale de l'Ouest* [1992] ECR I-1847) that the scope of Article 30 does not extend to the obstacles to trade covered by other specific provisions of the Treaty, and that obstacles of a fiscal nature or having an effect equivalent to customs duties which are covered by Articles 9 to 16 and 95 of the Treaty do not fall within the prohibition laid down in Article 30.

15 In view of those decisions, the Court must consider first whether a measure such as that described in the questions submitted by the national court falls within the scope of Articles 12 and 13 or Article 95 of the Treaty, and only if the answer is in the negative need it consider whether the measure under examination falls within the scope of Article 30 of the Treaty.

Articles 12, 13 and 95 of the Treaty

16 Since the Treaty provisions concerning charges having equivalent effect and those concerning discriminatory internal taxation cannot be applied concurrently (see the judgments in Case 94/74 *IGAV* v *ENCC* [1975] ECR 699 and in Joined Cases C-149/91 and C-150/91 *Sanders* [1992] ECR I-3899), it is necessary to determine the precise scope of each of those provisions.

17 Articles 12 and 13 of the Treaty prohibit customs duties on imports and exports in trade between the Member States and charges having equivalent effect. With regard

to customs duties and charges having equivalent effect on imports, the Court has stated (judgments in Case 77/72 *Capolongo* [1973] ECR 611, *Compagnie Commerciale de l'Ouest* and *Sanders*, cited above) that in principle that prohibition covers all charges levied at the time of or by reason of importation, which are imposed specifically on an imported product but not on a similar domestic product. It has also held that pecuniary charges intended to finance the activities of an agency governed by public law can constitute charges having equivalent effect.

18 In the same judgments, the Court stated that, in interpreting the term 'charge having an effect equivalent to a customs duty on imports', it might be necessary to take account of the use to which the pecuniary charges levied are put. When such a pecuniary charge or duty is intended exclusively to support activities which specifically benefit taxed domestic products, the result may be that the general duty levied, according to the same criteria, on the imported product and the domestic product nevertheless constitutes for one of them a net additional financial burden, whilst for the other it constitutes in reality a set-off against benefits or aid previously received. Consequently, a duty imposed under a general system of internal taxation applying systematically to domestic and imported products according to the same criteria can nevertheless constitute a charge having an effect equivalent to customs duties on imports when the revenue from that contribution is intended exclusively to support activities which specifically benefit the taxed domestic products.

19 Article 95 prohibits Member States from directly or indirectly imposing on the products of other Member States any internal taxation in excess of that imposed on similar domestic products or of such a nature as to afford protection to other domestic products. The applicability of the provision in question therefore depends on whether or not the internal taxation measure is discriminatory or protective (judgment in *Compagnie Commerciale de l'Ouest*, cited above, paragraph 25).

20 Where a charge is imposed on domestic and imported products according to the same criteria, the Court has consistently held that it may be necessary to take into

account the purpose to which the revenue from the charge is put. Thus, if the revenue from such a charge is intended to finance activities for the special advantage of the taxed domestic product, it may follow that the charge imposed on the basis of the same criteria nevertheless constitutes discriminatory taxation in so far as the fiscal burden on the domestic products is neutralized by the advantages which the charge is used to finance, whilst the charge on the imported product constitutes a net burden (judgments in Case 73/79 *Commission* v *Italy* [1980] ECR 1533, paragraph 15, and in *Compagnie Commerciale de l'Ouest*, cited above, paragraph 26).

21 It follows from the foregoing considerations that if the advantages stemming from the use of the proceeds of the contribution in question fully offset the burden borne by the domestic product when it is placed on the market, that contribution constitutes a charge having an effect equivalent to customs duties, contrary to Article 12 et seq. of the Treaty. If those advantages only partly offset the burden borne by domestic products, the charge in question is subject to Article 95 of the Treaty. In the latter case, the charge would be incompatible with Article 95 of the Treaty and is therefore prohibited to the extent to which it discriminates against imported products, that is to say to the extent to which it partially offsets the burden borne by the taxed domestic product (see, most recently, the judgment in *Sanders*, cited above).

22 It is for the national court to determine whether the burden borne by the domestic product is wholly or partly offset by the use of the revenue from the charge in question (judgment in *Compagnie Commerciale de l'Ouest*, cited above, paragraph 28).

23 In view of the foregoing, it must be stated in reply to the national court that a compulsory contribution constituting a parafiscal charge, applied under the same conditions as regards its collection to both domestic and imported products, the revenue from which is used for the benefit of domestic products only, so that the advantages accruing from it wholly offset the burden borne by those products,

constitutes a charge having an effect equivalent to customs duties prohibited by Article 12 of the Treaty. If those advantages only partly offset the burden borne by domestic products, such a charge constitutes discriminatory taxation prohibited by Article 95 of the Treaty.

24 Finally, the Court has consistently held that Articles 12, 13 and 95 of the Treaty have direct effect and create individual rights which the national courts must protect (judgments in Case 26/62 *Van Gend & Loos* [1963] ECR 1, in *Capolongo*, cited above, and in Case 74/76 *Iannelli* v *Meroni* [1977] ECR 557).

Article 30 et seq.

25 In view of the foregoing considerations, by virtue of which the parafiscal charge at issue is governed either by Article 12 et seq. or by Article 95 of the Treaty, depending on matters of fact to be examined by the national court, Article 30 cannot apply to the present case (judgment in *Compagnie Commerciale de l'Ouest*, cited above, paragraph 29).

26 It must therefore be stated in reply to the national court that a parafiscal charge of the kind at issue in the main proceedings, being governed by Article 12 et seq. or Article 95 of the Treaty, is not governed by Article 30 thereof.

Article 92 et seq. of the Treaty

27 The national court asks whether a parafiscal charge of the kind at issue is compatible with the Treaty provisions on State aid.

28 Although the parafiscal charge in question may be prohibited either by Articles 12 and 13 or by Article 95 of the Treaty, the use to which the revenue from that

charge is put, for the benefit of domestic products, may nevertheless constitute State aid incompatible with the common market, if the conditions for the application of Article 92 of the Treaty, as interpreted by the Court in previous decisions, are met (judgments in *Compagnie Commerciale de l'Ouest* and in *Sanders*, cited above).

29 However, the Court has consistently held that the incompatibility of State aid with the common market is neither absolute nor unconditional. The intention of the Treaty, in providing through Article 93 for aid to be kept under constant review and supervised by the Commission, is that the finding that an aid may be incompatible with the common market is to be determined, subject to review by the Court, by means of an appropriate procedure which it is the Commission's responsibility to set in motion. Individuals cannot therefore simply, on the basis of Article 92 alone, challenge the compatibility of an aid with Community law before the national courts or ask them to decide as the main or a subsidiary issue on any incompatibility (judgments in *Iannelli*, cited above, in Case 78/76 *Steinike and Weinlig* [1977] ECR 595, in *Compagnie Commerciale de l'Ouest* and in *Sanders*, both cited above).

30 Nevertheless, it is for the national courts to uphold the rights of the persons concerned in the event of a possible breach by the national authorities of the prohibition on putting aid into effect in the last sentence of Article 93(3) of the Treaty which has direct effect. Where such a breach is invoked by individuals who may rely thereon and is established by the national courts, the latter must take all the consequential measures under national law as regards both the validity of decisions giving effect to aid measures and the recovery of the financial support granted. When national courts take a decision in this connection, they do not decide on the compatibility of the aid measures with the common market, the final assessment of which is the exclusive responsibility of the Commission, subject to review by the Court of Justice (judgments in Case C-354/90 *Fédération Nationale du Commerce Extérieur* [1991] ECR I-5505 and in *Sanders*, cited above).

31 It is also for the national courts to uphold the rights of those concerned, by drawing all the inferences, in accordance with their national law, as regards the validity

of measures implementing the aid in question and the recovery of the financial support granted, where the Commission finds by a decision adopted under Article 93(2) of the Treaty that a measure granting aid is incompatible with the common market (judgment in *Steinike and Weinlig*, cited above).

32 It must therefore be stated in reply to the national court that a parafiscal charge of the kind at issue in the main proceedings may, depending on how the revenue from it is used, constitute State aid incompatible with the common market if the conditions for the application of Article 92 of the Treaty are met, that being a matter for the Commission to determine in accordance with the procedure laid down for that purpose in Article 93 of the Treaty. In that respect, regard must also be had to the jurisdiction of the national courts where, in introducing the charge, the Member State concerned failed to comply with its obligations under Article 93(3) of the Treaty, and where a Commission decision under Article 93(2) of the Treaty has found the levying of the charge as a method of financing State aid to be incompatible with the common market.

Costs

33 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Rechtbank van Eerste Aanleg, Turnhout, by order of 14 January 1991, hereby rules:

1. A compulsory contribution constituting a parafiscal charge, applied under the same conditions as regards its collection to both domestic and imported products, the revenue from which is used for the benefit of domestic products only, so that the advantages accruing from it wholly offset the burden borne by those products, constitutes a charge having an effect equivalent to customs duties prohibited by Article 12 of the Treaty. If those advantages only partly offset the burden borne by domestic products, such a charge constitutes discriminatory taxation prohibited by Article 95 of the Treaty.

2. A parafiscal charge of that kind, being governed by Article 12 et seq. or Article 95 of the Treaty, is not governed by Article 30 thereof.

3. Articles 12, 13 and 95 of the Treaty create rights for individuals which the national courts must protect.

4. A parafiscal charge of the kind at issue in the main proceedings may, depending on how the revenue from it is used, constitute State aid incompatible with the common market if the conditions for the application of Article 92 of the Treaty are met, that being a matter for the Commission to determine in accordance with the procedure laid down for that purpose in Article 93 of the Treaty. In that respect, regard must also be had to the jurisdiction of the national courts where, in introducing the charge, the Member State concerned failed to comply with its obligations under Article 93(3) of the Treaty, and where a Commission decision under Article 93(2) of the Treaty has found the levying of the charge as a method of financing State aid to be incompatible with the common market.

Kakouris Murray

Mancini Schockweiler Diez de Velasco

Delivered in open court in Luxembourg on 16 December 1992.

J.-G. Giraud
Registrar

C. N. Kakouris
President of the Sixth Chamber